

[Second Reprint]

ASSEMBLY, No. 682

STATE OF NEW JERSEY

210th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2002 SESSION

Sponsored by:

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

Assemblyman MATT AHEARN

District 38 (Bergen)

Co-Sponsored by:

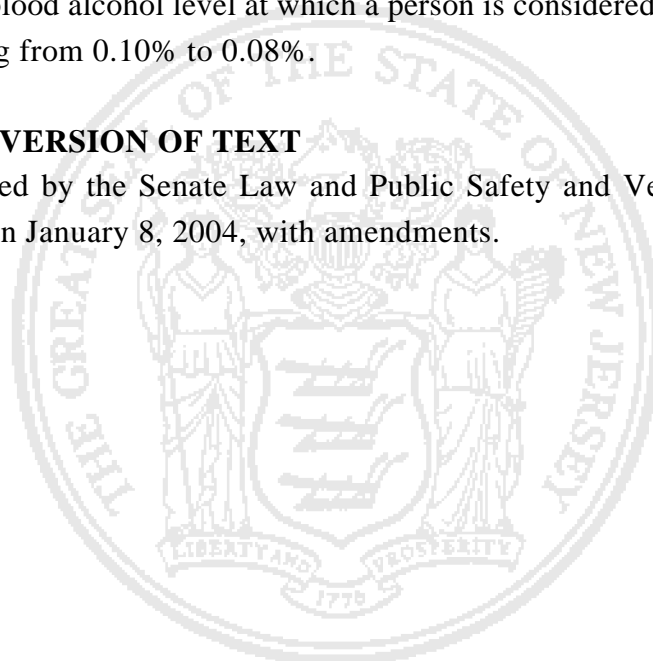
**Assemblywomen Previte, Greenstein, Assemblymen Barnes, Guear, Russo,
Johnson and Diegnan**

SYNOPSIS

Reduces blood alcohol level at which a person is considered to be guilty of drunk driving from 0.10% to 0.08%.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety and Veterans' Affairs Committee on January 8, 2004, with amendments.



(Sponsorship Updated As Of: 12/12/2003)

1 AN ACT concerning drunk driving ¹[and],¹ amending R.S.39:4-50
 2 ¹and P.L.1992, c.189, and supplementing Title 39 of the Revised
 3 Statutes¹.

4
 5 **BE IT ENACTED** by the Senate and General Assembly of the State
 6 of New Jersey:

7
 8 ¹1. (New section) This act shall be known and may be cited as
 9 "Florence's Law."¹

10
 11 ¹[1.]¹ R.S.39:4-50 is amended to read as follows:

12 39:4-50. (a) Except as provided in subsection (g) of this section,
 13 a person who operates a motor vehicle while under the influence of
 14 intoxicating liquor, narcotic, hallucinogenic or habit-producing drug,
 15 or operates a motor vehicle with a blood alcohol concentration of
 16 ~~[0.10%]~~ 0.08% or more by weight of alcohol in the defendant's blood
 17 or permits another person who is under the influence of intoxicating
 18 liquor, narcotic, hallucinogenic or habit-producing drug to operate a
 19 motor vehicle owned by him or in his custody or control or permits
 20 another to operate a motor vehicle with a blood alcohol concentration
 21 of ~~[0.10%]~~ 0.08% or more by weight of alcohol in the defendant's
 22 blood shall be subject:

23 (1) For the first offense¹[,];

24 (i) if the person's blood alcohol concentration is ²0.08% or higher
 25 but² less than 0.10%, ²or the person operates a motor vehicle while
 26 under the influence of intoxicating liquor, or the person permits
 27 another person who is under the influence of intoxicating liquor to
 28 operate a motor vehicle owned by him or in his custody or control or
 29 permits another person with a blood alcohol concentration of 0.08%
 30 or higher but less than 0.10% to operate a motor vehicle.² to a fine of
 31 not less than \$250 nor more than \$400 and a period of detainment of
 32 not less than 12 hours nor more than 48 hours spent during two
 33 consecutive days of not less than six hours each day and served as
 34 prescribed by the program requirements of the Intoxicated Driver
 35 Resource Centers established under subsection (f) of this section and,
 36 in the discretion of the court, a term of imprisonment of not more than
 37 30 days and shall forthwith forfeit his right to operate a motor vehicle
 38 over the highways of this State for a period of three months;

39 (ii) if the person's blood alcohol concentration is 0.10% or higher,
 40 ²[but less than 0.16%]² or the person operates a motor vehicle while
 41 under the influence of narcotic, hallucinogenic or habit-producing

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted December 11, 2003.

² Senate SLP committee amendments adopted January 8, 2004.

1 drug,¹ ²or the person permits another person who is under the
2 influence of narcotic, hallucinogenic or habit-producing drug to
3 operate a motor vehicle owned by him or in his custody or control, or
4 permits another person with a blood alcohol concentration of 0.10%
5 or more to operate a motor vehicle,² to a fine of not less than
6 ²[\$250.00] ~~\$300~~² nor more than ²[\$400.00] ~~\$500~~² and a period of
7 detainment of not less than 12 hours nor more than 48 hours spent
8 during two consecutive days of not less than six hours each day and
9 served as prescribed by the program requirements of the Intoxicated
10 Driver Resource Centers established under subsection (f) of this
11 section and, in the discretion of the court, a term of imprisonment of
12 not more than 30 days and shall forthwith forfeit his right to operate
13 a motor vehicle over the highways of this State for a period of not less
14 than ²[six] ~~seven~~² months nor more than one year¹[.];

15 (iii) ²[if the person's blood alcohol concentration is 0.16% or
16 higher, to a fine of not less than \$400 nor more than \$600 and a period
17 of detainment of not less than 12 hours nor more than 48 hours spent
18 during two consecutive days of not less than six hours each day and
19 served as prescribed by the program requirements of the Intoxicated
20 Driver Resource Centers established under subsection (f) of this
21 section and, in the discretion of the court, a term of imprisonment of
22 not more than 30 days and shall forthwith forfeit his right to operate
23 a motor vehicle over the highways of this State for a period of not less
24 than nine months nor more than one year;

25 (iv)¹² For a first offense, a person also shall be subject to the
26 provisions of P.L.1999, c.417 (C.39:4-50.16 et al.).

27 (2) For a second violation, a person shall be subject to a fine of not
28 less than \$500.00 nor more than \$1,000.00, and shall be ordered by
29 the court to perform community service for a period of 30 days, which
30 shall be of such form and on such terms as the court shall deem
31 appropriate under the circumstances, and shall be sentenced to
32 imprisonment for a term of not less than 48 consecutive hours, which
33 shall not be suspended or served on probation, nor more than 90 days,
34 and shall forfeit his right to operate a motor vehicle over the highways
35 of this State for a period of two years upon conviction, and, after the
36 expiration of said period, he may make application to the ¹[Director
37 of the Division of Motor Vehicles] ²Chief² Administrator of the New
38 Jersey Motor Vehicle Commission¹ for a license to operate a motor
39 vehicle, which application may be granted at the discretion of the
40 ²[director] chief administrator², consistent with subsection (b) of this
41 section. For a second violation, a person also shall be required to
42 install an ignition interlock device under the provisions of P.L.1999,
43 c.417 (C.39:4-50.16 et al.) or shall have his registration certificate and
44 registration plates revoked for two years under the provisions of
45 section 2 of P.L.1995, c.286 (C.39:3-40.1).

46 (3) For a third or subsequent violation, a person shall be subject to

1 a fine of \$1,000.00, and shall be sentenced to imprisonment for a term
2 of not less than 180 days, except that the court may lower such term
3 for each day, not exceeding 90 days, served performing community
4 service in such form and on such terms as the court shall deem
5 appropriate under the circumstances and shall thereafter forfeit his
6 right to operate a motor vehicle over the highways of this State for 10
7 years. For a third or subsequent violation, a person also shall be
8 required to install an ignition interlock device under the provisions of
9 P.L.1999, c.417 (C.39:4-50.16 et al.) or shall have his registration
10 certificate and registration plates revoked for 10 years under the
11 provisions of section 2 of P.L.1995, c.286 (C.39:3-40.1).

12 As used in this section, the phrase "narcotic, hallucinogenic or
13 habit-producing drug" includes an inhalant or other substance
14 containing a chemical capable of releasing any toxic vapors or fumes
15 for the purpose of inducing a condition of intoxication, such as any
16 glue, cement or any other substance containing one or more of the
17 following chemical compounds: acetone and acetate, amyl nitrite or
18 amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite,
19 butyl nitrate or their isomers, ethyl acetate, ethyl alcohol, ethyl nitrite
20 or ethyl nitrate, ethylene dichloride, isobutyl alcohol or isopropyl
21 alcohol, methyl alcohol, methyl ethyl ketone, nitrous oxide, n-propyl
22 alcohol, pentachlorophenol, petroleum ether, propyl ¹[nitrate] nitrite¹
23 or propyl nitrate or their isomers, toluene, toluol or xylene or any
24 other chemical substance capable of causing a condition of
25 intoxication, inebriation, excitement, stupefaction or the dulling of the
26 brain or nervous system as a result of the inhalation of the fumes or
27 vapors of such chemical substance.

28 Whenever an operator of a motor vehicle has been involved in an
29 accident resulting in death, bodily injury or property damage, a police
30 officer shall consider that fact along with all other facts and
31 circumstances in determining whether there are reasonable grounds to
32 believe that person was operating a motor vehicle in violation of this
33 section.

34 A conviction of a violation of a law of a substantially similar nature
35 in another jurisdiction, regardless of whether that jurisdiction is a
36 signatory to the Interstate Driver License Compact pursuant to
37 P.L.1966, c.73 (C.39:5D-1 et seq.), shall constitute a prior conviction
38 under this subsection unless the defendant can demonstrate by clear
39 and convincing evidence that the conviction in the other jurisdiction
40 was based exclusively upon a violation of a proscribed blood alcohol
41 concentration of less than ¹[0.10%] 0.08%¹.

42 If the driving privilege of any person is under revocation or
43 suspension for a violation of any provision of this Title or Title 2C of
44 the New Jersey Statutes at the time of any conviction for a violation
45 of this section, the revocation or suspension period imposed shall
46 commence as of the date of termination of the existing revocation or

1 suspension period. In the case of any person who at the time of the
2 imposition of sentence is less than 17 years of age, the forfeiture,
3 suspension or revocation of the driving privilege imposed by the court
4 under this section shall commence immediately, run through the
5 offender's seventeenth birthday and continue from that date for the
6 period set by the court pursuant to paragraphs (1) through (3) of this
7 subsection. A court that imposes a term of imprisonment under this
8 section may sentence the person so convicted to the county jail, to the
9 workhouse of the county wherein the offense was committed, to an
10 inpatient rehabilitation program or to an Intoxicated Driver Resource
11 Center or other facility approved by the chief of the Intoxicated
12 Driving Program Unit in the Department of Health and Senior
13 Services; provided that for a third or subsequent offense a person shall
14 not serve a term of imprisonment at an Intoxicated Driver Resource
15 Center as provided in subsection (f).

16 A person who has been convicted of a previous violation of this
17 section need not be charged as a second or subsequent offender in the
18 complaint made against him in order to render him liable to the
19 punishment imposed by this section on a second or subsequent
20 offender, but if the second offense occurs more than 10 years after the
21 first offense, the court shall treat the second conviction as a first
22 offense for sentencing purposes and if a third offense occurs more than
23 10 years after the second offense, the court shall treat the third
24 conviction as a second offense for sentencing purposes.

25 (b) A person convicted under this section must satisfy the
26 screening, evaluation, referral, program and fee requirements of the
27 Division of Alcoholism and Drug Abuse's Intoxicated Driving Program
28 Unit, and of the Intoxicated Driver Resource Centers and a program
29 of alcohol and drug education and highway safety, as prescribed by the
30 ¹[Director of the Division of Motor Vehicles] ²[administrator¹] chief
31 administrator². The sentencing court shall inform the person
32 convicted that failure to satisfy such requirements shall result in a
33 mandatory two-day term of imprisonment in a county jail and a driver
34 license revocation or suspension and continuation of revocation or
35 suspension until such requirements are satisfied, unless stayed by court
36 order in accordance with the Rules Governing the Courts of the State
37 of New Jersey, or R.S.39:5-22. Upon sentencing, the court shall
38 forward to the Division of Alcoholism and Drug Abuse's Intoxicated
39 Driving Program Unit a copy of a person's conviction record. A fee
40 of \$100.00 shall be payable to the Alcohol Education, Rehabilitation
41 and Enforcement Fund established pursuant to section 3 of P.L.1983,
42 c.531 (C.26:2B-32) to support the Intoxicated Driving Program Unit.

43 (c) Upon conviction of a violation of this section, the court shall
44 collect forthwith the New Jersey driver's license or licenses of the
45 person so convicted and forward such license or licenses to the
46 ¹[Director of the Division of Motor Vehicles] ²[administrator¹] chief

1 administrator². The court shall inform the person convicted that if he
2 is convicted of personally operating a motor vehicle during the period
3 of license suspension imposed pursuant to subsection (a) of this
4 section, he shall, upon conviction, be subject to the penalties
5 established in R.S.39:3-40. The person convicted shall be informed
6 orally and in writing. A person shall be required to acknowledge
7 receipt of that written notice in writing. Failure to receive a written
8 notice or failure to acknowledge in writing the receipt of a written
9 notice shall not be a defense to a subsequent charge of a violation of
10 R.S.39:3-40. In the event that a person convicted under this section
11 is the holder of any out-of-State driver's license, the court shall not
12 collect the license but shall notify forthwith the ¹[director]
13 ²[administrator¹] chief administrator², who shall, in turn, notify
14 appropriate officials in the licensing jurisdiction. The court shall,
15 however, revoke the nonresident's driving privilege to operate a motor
16 vehicle in this State, in accordance with this section. Upon conviction
17 of a violation of this section, the court shall notify the person
18 convicted, orally and in writing, of the penalties for a second, third or
19 subsequent violation of this section. A person shall be required to
20 acknowledge receipt of that written notice in writing. Failure to
21 receive a written notice or failure to acknowledge in writing the
22 receipt of a written notice shall not be a defense to a subsequent
23 charge of a violation of this section.

24 (d) The ¹[Director of the Division of Motor Vehicles]
25 ²[administrator¹] chief administrator ³shall promulgate rules and
26 regulations pursuant to the "Administrative Procedure Act," P.L.1968,
27 c.410 (C.52:14B-1 et seq.) in order to establish a program of alcohol
28 education and highway safety, as prescribed by this act.

29 (e) Any person accused of a violation of this section who is liable
30 to punishment imposed by this section as a second or subsequent
31 offender shall be entitled to the same rights of discovery as allowed
32 defendants pursuant to the Rules Governing the Courts of the State of
33 New Jersey.

34 (f) The counties, in cooperation with the Division of Alcoholism
35 and Drug Abuse and the ¹[Division of Motor Vehicles] commission¹,
36 but subject to the approval of the Division of Alcoholism and Drug
37 Abuse, shall designate and establish on a county or regional basis
38 Intoxicated Driver Resource Centers. These centers shall have the
39 capability of serving as community treatment referral centers and as
40 court monitors of a person's compliance with the ordered treatment,
41 service alternative or community service. All centers established
42 pursuant to this subsection shall be administered by a counselor
43 certified by the Alcohol and Drug Counselor Certification Board of
44 New Jersey or other professional with a minimum of five years'
45 experience in the treatment of alcoholism. All centers shall be required
46 to develop individualized treatment plans for all persons attending the

1 centers; provided that the duration of any ordered treatment or referral
2 shall not exceed one year. It shall be the center's responsibility to
3 establish networks with the community alcohol and drug education,
4 treatment and rehabilitation resources and to receive monthly reports
5 from the referral agencies regarding a person's participation and
6 compliance with the program. Nothing in this subsection shall bar
7 these centers from developing their own education and treatment
8 programs; provided that they are approved by the Division of
9 Alcoholism and Drug Abuse.

10 Upon a person's failure to report to the initial screening or any
11 subsequent ordered referral, the Intoxicated Driver Resource Center
12 shall promptly notify the sentencing court of the person's failure to
13 comply.

14 Required detention periods at the Intoxicated Driver Resource
15 Centers shall be determined according to the individual treatment
16 classification assigned by the Intoxicated Driving Program Unit. Upon
17 attendance at an Intoxicated Driver Resource Center, a person shall be
18 required to pay a per diem fee of \$75.00 for the first offender program
19 or a per diem fee of \$100.00 for the second offender program, as
20 appropriate. Any increases in the per diem fees after the first full year
21 shall be determined pursuant to rules and regulations adopted by the
22 Commissioner of Health and Senior Services in consultation with the
23 Governor's Council on Alcoholism and Drug Abuse pursuant to the
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.).

26 The centers shall conduct a program of alcohol and drug education
27 and highway safety, as prescribed by the ¹[Director of the Division of
28 Motor Vehicles] ²[administrator¹] chief administrator².

29 The Commissioner of Health and Senior Services shall adopt rules
30 and regulations pursuant to the "Administrative Procedure Act,"
31 P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the
32 purposes of this subsection.

33 (g) When a violation of this section occurs while:

34 (1) on any school property used for school purposes which is
35 owned by or leased to any elementary or secondary school or school
36 board, or within 1,000 feet of such school property;

37 (2) driving through a school crossing as defined in R.S.39:1-1 if
38 the municipality, by ordinance or resolution, has designated the school
39 crossing as such; or

40 (3) driving through a school crossing as defined in R.S.39:1-1
41 knowing that juveniles are present if the municipality has not
42 designated the school crossing as such by ordinance or resolution, the
43 convicted person shall: for a first offense, be fined not less than \$500
44 or more than \$800, be imprisoned for not more than 60 days and have
45 his license to operate a motor vehicle suspended for a period of not
46 less than one year or more than two years; for a second offense, be

1 fined not less than \$1,000 or more than \$2,000, perform community
2 service for a period of 60 days, be imprisoned for not less than 96
3 consecutive hours, which shall not be suspended or served on
4 probation, nor more than 180 days, except that the court may lower
5 such term for each day, not exceeding 90 days, served performing
6 community service in such form and on such terms as the court shall
7 deem appropriate under the circumstances and have his license to
8 operate a motor vehicle suspended for a period of not less than four
9 years; and, for a third offense, be fined \$2,000, imprisoned for 180
10 days and have his license to operate a motor vehicle suspended for a
11 period of 20 years; the period of license suspension shall commence
12 upon the completion of any prison sentence imposed upon that person.

13 A map or true copy of a map depicting the location and boundaries
14 of the area on or within 1,000 feet of any property used for school
15 purposes which is owned by or leased to any elementary or secondary
16 school or school board produced pursuant to section 1 of P.L.1987,
17 c.101 (C.2C:35-7) may be used in a prosecution under paragraph (1)
18 of this subsection.

19 It shall not be relevant to the imposition of sentence pursuant to
20 paragraph (1) or (2) of this subsection that the defendant was unaware
21 that the prohibited conduct took place while on or within 1,000 feet
22 of any school property or while driving through a school crossing.
23 Nor shall it be relevant to the imposition of sentence that no juveniles
24 were present on the school property or crossing zone at the time of the
25 offense or that the school was not in session.

26 (h) A court also may order a person convicted pursuant to
27 subsection a. of this section, to participate in a supervised visitation
28 program as either a condition of probation or a form of community
29 service, giving preference to those who were under the age of 21 at
30 the time of the offense. Prior to ordering a person to participate in
31 such a program, the court may consult with any person who may
32 provide useful information on the defendant's physical, emotional and
33 mental suitability for the visit to ensure that it will not cause any injury
34 to the defendant. The court also may order that the defendant
35 participate in a counseling session under the supervision of the
36 Intoxicated Driving Program Unit prior to participating in the
37 supervised visitation program. The supervised visitation program shall
38 be at one or more of the following facilities which have agreed to
39 participate in the program under the supervision of the facility's
40 personnel and the probation department:

41 (1) a trauma center, critical care center or acute care hospital
42 having basic emergency services, which receives victims of motor
43 vehicle accidents for the purpose of observing appropriate victims of
44 drunk drivers and victims who are, themselves, drunk drivers;

45 (2) a facility which cares for advanced alcoholics or drug abusers,
46 to observe persons in the advanced stages of alcoholism or drug abuse;

1 or

2 (3) if approved by a county medical examiner, the office of the
3 county medical examiner or a public morgue to observe appropriate
4 victims of vehicle accidents involving drunk drivers.

5 As used in this section, "appropriate victim" means a victim whose
6 condition is determined by the facility's supervisory personnel and the
7 probation officer to be appropriate for demonstrating the results of
8 accidents involving drunk drivers without being unnecessarily
9 gruesome or traumatic to the defendant.

10 If at any time before or during a visitation the facility's supervisory
11 personnel and the probation officer determine that the visitation may
12 be or is traumatic or otherwise inappropriate for that defendant, the
13 visitation shall be terminated without prejudice to the defendant. The
14 program may include a personal conference after the visitation, which
15 may include the sentencing judge or the judge who coordinates the
16 program for the court, the defendant, defendant's counsel, and, if
17 available, the defendant's parents to discuss the visitation and its effect
18 on the defendant's future conduct. If a personal conference is not
19 practicable because of the defendant's absence from the jurisdiction,
20 conflicting time schedules, or any other reason, the court shall require
21 the defendant to submit a written report concerning the visitation
22 experience and its impact on the defendant. The county, a court, any
23 facility visited pursuant to the program, any agents, employees, or
24 independent contractors of the court, county, or facility visited
25 pursuant to the program, and any person supervising a defendant
26 during the visitation, are not liable for any civil damages resulting from
27 injury to the defendant, or for civil damages associated with the
28 visitation which are caused by the defendant, except for willful or
29 grossly negligent acts intended to, or reasonably expected to result in,
30 that injury or damage.

31 The Supreme Court may adopt court rules or directives to
32 effectuate the purposes of this subsection.

33 (i) In addition to any other fine, fee, or other charge imposed
34 pursuant to law, the court shall assess a person convicted of a
35 violation of the provisions of this section a surcharge of \$100, of
36 which amount \$50 shall be payable to the municipality in which the
37 conviction was obtained and \$50 shall be payable to the Treasurer of
38 the State of New Jersey for deposit into the General Fund.

39 (cf: P.L.2002, c.34, s.17).

40

41 ¹3. Section 1 of P.L.1992, c.189 (C.39:4-50.14) is amended to read
42 as follows:

43 1. Any person under the legal age to purchase alcoholic beverages
44 who operates a motor vehicle with a blood alcohol concentration of
45 0.01% or more, but less than [0.10%] 0.08%, by weight of alcohol in
46 his blood, shall forfeit his right to operate a motor vehicle over the

1 highways of this State or shall be prohibited from obtaining a license
2 to operate a motor vehicle in this State for a period of not less than 30
3 or more than 90 days beginning on the date he becomes eligible to
4 obtain a license or on the day of conviction, whichever is later, and
5 shall perform community service for a period of not less than 15 or
6 more than 30 days.

7 In addition, the person shall satisfy the program and fee
8 requirements of an Intoxicated Driver Resource Center or participate
9 in a program of alcohol education and highway safety as prescribed by
10 the ²[Director of the Division of Motor Vehicles] chief
11 administrator².

12 The penalties provided under the provisions of this section shall be
13 in addition to the penalties which the court may impose under
14 N.J.S.2C:33-15, R.S.33:1-81, R.S.39:4-50 or any other law.¹
15 (cf: P.L.1992, c.189, s.1)

16

17 ¹[2.] 4.¹ This act shall take effect immediately.